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**IN THE
COURT OF APPEALS OF INDIANA**

TONY A. WARREN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0512-CR-702
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0411-MR-206215

September 15, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tony Warren appeals from his conviction for Murder, a felony, following a jury trial. The sole issue he raises on appeal is whether the State presented sufficient evidence to sustain his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 31, 2004, Adam Whitney and Tony Warren arranged to buy marijuana from Jacob Mecatl. Warren drove Whitney to meet Mecatl. Once they arrived at the designated location, Mecatl sat down in the front passenger seat of Warren's car, and Whitney sat immediately behind Mecatl in a rear passenger seat. Warren got out of the driver's seat and sat next to Whitney in the back seat, and Jairo Ramirez, who was with Mecatl, sat in the driver's seat.

Warren told Ramirez to drive a short distance, and Ramirez complied. Ramirez then stopped the car and got out. Warren also got out of the car and talked to Ramirez. Both men established that the other was not armed with a gun. Warren then got into the driver's seat of the car, and Mecatl told Ramirez that he was uncomfortable with Warren sitting in the driver's seat. When Ramirez relayed that information to Warren, Warren drove the car away from where Ramirez was standing. After Mecatl tried to grab the steering wheel, Mecatl was shot three times. Warren and Whitney dumped Mecatl's body in a grocery store parking lot located on Pike Plaza Road, drove to a friend's house, and divided the three pounds of marijuana they had stolen from Mecatl.

Ramirez subsequently looked at a police photo array and identified Whitney as the man sitting behind Mecatl in the car right before the shooting. Ramirez identified Warren as the driver of that car. An autopsy of Mecatl's body revealed that he died as a result of the gunshot wounds.

The State charged Warren with murder, felony murder, robbery, and carrying a handgun without a license. Whitney and Warren were tried together.¹ At the close of the State's evidence, Warren moved for judgment on the evidence on his carrying a handgun without a license charge. The trial court granted that motion. Thereafter, Whitney testified that Warren was the one who shot Mecatl. The trial court instructed the jury in part that the need to render a verdict on the carrying a handgun without a license charge against Warren had been "removed from [the jury's] consideration" and that the jury "must not speculate on the reason for [that] or consider it in [the jury's] consideration of the remaining charges as to either defendant." Appellant's App. at 90. The trial court further instructed the jury that the defendants may be found guilty of murder either under Indiana Code Section 35-42-1-1 or under the accomplice liability statute, Indiana Code Section 35-41-2-4. The jury found Warren guilty of murder, but hung on the charges of felony murder and robbery. The trial court entered a judgment of conviction on the murder charge and declared a mistrial on the felony murder and robbery charges. This appeal ensued.

DISCUSSION AND DECISION

Warren contends that the State did not present sufficient evidence to support his

¹ The State charged each codefendant as the principal and, in the alternative, as an accomplice of the other.

conviction. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove murder, the State was required to show either that Warren knowingly or intentionally shot Mecatl and Mecatl died as a result, or that Warren knowingly or intentionally aided, induced, or caused another person to commit the murder of Mecatl. See Ind. Code §§ 35-41-2-4, 35-42-1-1. Aiding, inducing, or causing murder is not a separate offense in itself but is, in fact, the basis of liability for the underlying offense of murder. Jester v. State, 724 N.E.2d 235 (Ind. 2000). As such, a defendant may be convicted on evidence of aiding or inducing even though the State charged the defendant as the principal. Id. In determining whether a defendant aided another in the commission of a crime, the court considers four factors: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) the defendant's conduct before, during, and after the occurrence of the crime. Herron v. State, 808 N.E.2d 172, 175-76 (Ind. Ct. App. 2004). In considering these factors, we use the totality of the circumstances to determine whether the purported accomplice demonstrated affirmative conduct from which an inference of common

design or purpose to effect the commission of a crime may reasonably be drawn. See Peterson v. State, 699 N.E.2d 701, 706 (Ind. Ct. App. 1998).

The State has shown much more than Warren's mere presence at scene of the crime. See id. ("An accused's mere presence at the scene of the crime is insufficient to establish that he aided another person to commit an offense."). The State presented undisputed evidence that Whitney and Warren were the only people in the car at the time of the shooting. Warren was driving the car, and Whitney was sitting in the back seat directly behind Mecat. Indeed, the presence of both defendants had been prearranged between them when they originally agreed to meet Ramirez and Mecat. Warren's failure to oppose the murder is likewise undisputed. Further, a reasonable jury could conclude that Warren and Whitney dictated the positioning of the passengers in the car and the car's movement. Upon arriving at the rendezvous point, Warren and Whitney moved to the rear seats behind Ramirez and Mecat. Warren then instructed Ramirez on where to drive the car, and upon arriving at the desired location Warren resumed driving, over Mecat's protests, and left Ramirez behind. Almost immediately thereafter, Mecat was murdered. Based on these facts and affirmative conduct, a reasonable jury could have concluded that Warren knowingly or intentional aided in the commission of Mecat's murder.²

² Warren's argument that the jury rendered an inconsistent verdict by finding Whitney guilty of murder, felony murder, and robbery, but finding Warren guilty only of murder (presumably under an accomplice theory) does nothing to attack the sufficiency of evidence supporting Warren's murder conviction. See Powell v. State, 769 N.E.2d 1128, 1131 (Ind. 2002) ("A jury's verdict may be inconsistent or even illogical but nevertheless permissible if it is supported by sufficient evidence.").

Finally, Warren's assertion that Whitney's testimony that Warren was the triggerman is unreliable amounts to a request that we reweigh the evidence, which we will not do. We conclude that the evidence is sufficient to support Warren's conviction.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.